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In re Application of
Paul Thomas Huckabee
Application No. 10/811,211
Filed: March 26, 2004
Attorney Docket No. TH2037

: **OFFICE OF PETITIONS**
:
: **DECISION ON PETITION**
: **UNDER 37 CFR 1.78(a)(6)**
:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed October 15, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR §§ 1.78(a)(6), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the prior-filed provisional application.

The instant pending provisional application was filed on March 26, 2004, and was pending at the time of the filing of the instant petition. While a reference to the prior-filed provisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter and the declaration filed with the above identified application.


The current procedure where a claim for priority under 37 CFR §§ 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application with the time period set forth in 37 CFR §§ 1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in

the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR §§ 1.78(a)(6).¹ In the instant case, the Office noted the claim for priority of the prior-filed provisional application in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the above, the \$130.00 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. All other inquiries concerning either the examination procedures or status of the application should be directed the Technology Center.

This matter is being referred to Technology Center Art Unit 3672 for appropriate action on the amendment filed October 15, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 119(e) to the prior-filed provisional application.


Frances Hicks
Petitions Examiner
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Office of the Deputy Commissioner
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¹ Note MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.